

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH ZEHNDER,

Plaintiff,

v.

Case No.: 2:22-cv-11638
Hon. Gershwin A. Drain

MICHAEL MAIN *et al.*,

Defendants.

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**ORDER ACCEPTING AND ADOPTING REPORT AND
RECOMMENDATION [ECF No. # 42] AND GRANTING DEFENDANTS'
MOTION TO DISMISS [ECF No. # 38]**

This matter is before the Court on the Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 37(b)(2)(A) and 41(b). ECF No. 38. In July 2022, Plaintiff Kenneth Zehnder, a former inmate at Isabella County Correctional Facility, filed a complaint against Sheriff Michael Main, Lieutenant Scott Welch, and Second Lieutenant Jonathon Thodoroff, arguing that they deprived him of his right to exercise his Islamic faith while he was incarcerated there. ECF No. 1. Plaintiff has not prosecuted his case in over a year, with his last participation in the case occurring on March 10, 2023, when he notified the Court of his address change. ECF No. 21. Plaintiff has failed to respond to discovery requests and has violated multiple court orders

directing him to respond to motions and to show cause. *See generally* ECF Nos. 36, 37, 39, 41. Accordingly, Defendants filed a Motion to Dismiss for failure to prosecute under Fed. R. Civ. P. 41(b) and as a discovery sanction under Fed. R. Civ. P. 37(b)(2)(A). ECF No. 38.

This matter was referred to Magistrate Judge Curtis Ivy, Jr., who issued a Report and Recommendation on September 17, 2024, recommending that the Court grant Defendants' Motion to Dismiss. ECF No. 42. Neither party has filed objections to the Report and Recommendation, and the time for filing objections has expired. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

Upon review of Defendants' briefing and the Magistrate Judge's Report and Recommendation, the Court concludes that the Magistrate Judge reached the correct conclusion. Therefore, the Court hereby **ACCEPTS** and **ADOPTS** Magistrate Judge Ivy's September 17, 2024 Report and Recommendation [ECF No. # 42] as this Court's findings of fact and conclusions of law. Defendants' Motion to Dismiss [ECF No. # 38] is **GRANTED**.

SO ORDERED.

Dated: October 24, 2024

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
October 24, 2024, by electronic and/or ordinary mail.

/s/ Marlena Williams

Case Manager